SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. [redacted] 121

REMEDIOS B. ABINOJA, JULIANA B. BAUTISTA, CARINA DERLA DRILON, EDUARDO REYES ESTACIO, ARCELI A. KALALO, EDNA T. PAREDES, SALUD U. RODRIQUEZ, LUZ B. YAP, MILAGROS T. AQUINO, MINERVA DIRIC BACTAT, SEVERINO M. DEASIS AND TERESITA VENDIOLA REVINA,
Petitioners,

vs.

IMMIGRATION AND NATURALIZATION SERVICE,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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INDEX.

	PAGE
Opinions Below	2
Jurisdiction	2
Questions Presented	2
Statute Involved	2
Statement	3, 4
Reasons for Granting the Writ	5-14
Conclusion	14
Appendix	15-27

CASES CITED.

Carriaga v. I. & N. S., 358 F. 2d 337 (7th Cir. 1966) . 2, 12, 14

Tuazon v. I. & N. S., 16174 (7th Cir., Jan. 30, 1968) . 2, 12, 14

Gemsco, Inc. v. Walling, 324 U. S. 244 . . . . . 12, 13

In re Roosevelt Lanes, Inc., 234 F. Supp. 842 (D. C. N. Y.) 13

Central Hanover Bank and Trust Co. v. Comm'r of Internal Revenue, 159 F. 2d 167, 169. Cert. denied 331 U. S. 836 13

U. S. v. American Trucking Assns., 310 U. S. 534 . . . . . 13, 14

STATUTES CITED.

Mutual Educational and Cultural Exchange Act of 1961 2

28 U. S. C. 1254(1) 2

Section 212(e) of Immigration and Nationality Act (8 U. S. C. 1182(e)) 2, 9, 10, 11, 12, 14

Section 245 of Immigration and Nationality Act (8 U. S. C. 1255) 3

Section 203(a)(3)(6) of Immigration and Nationality Act (8 U. S. C. 1152) 3

Section 1101(a)(15)(J) of Immigration and Nationality Act (8 U. S. C. 1182(e)) 9, 10

REGULATION.

8 C. F. R. 245.1(b) 11

LEGISLATIVE HISTORY.

Speech of Senator Walter F. Mondale, Congressional Record, Vol. 112, No. 146, dated Aug. 31, 1966 before the 89th Congress 5, 6

Speech of Dr. Donald F. Hornig, Director, Office of Science and Technology, Executive Office of the President, before the Immigration and Naturalization Subcommittee of the Senate Judiciary Committee on March 10, 1967 ..... 7, 8

Speech by Richard A. Humphrey, Director, Commission on International Education of American Council on Education, before the Subcommittee on Immigration and Naturalization of the Senate Judiciary Committee on Mar. 10, 1967 ..... 8, 9

Speech of Congressman Francis E. Walter, Chairman of the House Judiciary Committee, Congressional Record, Vol. 105, Part II, dated Feb. 5, 1959, page 1953 9

IN THE

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OCTOBER TERM, 1967.

No. .....

REMEDIOS B. ABINOJA, JULIANA B. BAUTISTA, CARINA DERLA DRILON, EDUARDO REYES ESTACIO, ARCELI A. KALALO, EDNA T. PAREDES, SALUD U. RODRIQUEZ, LUZ B. YAP, MILAGROS T. AQUINO, MINERVA DIRIC BACTAT, SEVERINO M. DEASIS AND TERESITA VENDIOLA REVINA,

Petitioners,

vs.

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Petitioners, Remedios B. Abinoja, Juliana B. Bautista, Carina Derla Drilon, Eduardo Reyes Estacio, Arceli A. Kalalo, Edna T. Paredes, Salud U. Rodriquez, Luz B. Yap, Milagros T. Aquino, Minerva Diric Bactat, Severino M. DeAsis and Teresita Vendiola Revina, pray that a writ of certiorari issue to review a judgment of the United States Court of Appeals for the Seventh Circuit in the above

cases, which denied adjustment of status to the petitioners herein under the Mutual Educational and Cultural Exchange Act of 1961.

OPINIONS BELOW.

The opinion of the United States Court of Appeals for the Seventh Circuit, which was rendered on April 9, 1968, and is appended hereto as Appendix, is not yet reported.

Prior opinions of the United States Court of Appeals relied on by the court in this opinion are reported in *Carriaga* v. *Immigration and Naturalization Service,* 368 F. 2d 337 (7th Cir., 1966), and *Tuazon* v. *Immigration and Naturalization Service,* No. 16174 (7th Cir., January 30, 1968).

JURISDICTION.

The judgment of the United States Court of Appeals for the Seventh Circuit was entered on April 9, 1968. The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

QUESTIONS PRESENTED.

1. Was the "return home" rule requirement in Section 212(e) of the Immigration and Nationality Act (8 U. S. C. 1182(e)) intended to apply even in cases where the participating country released the obligation of the Exchange Visitor to return to his homeland for the two-year period after the completion of the Exchange Program?

STATUTE INVOLVED.

Section 212(e) of the Immigration and Nationality Act (8 U. S. C. 1182(e)).

STATEMENT.

This is a consolidated petition for review of final orders of deportation issued by the District Director of the Immigration and Naturalization Service, United States Department of Justice, Chicago, Illinois, on the above cases.

The petitioners are all natives and citizens of the Philippines. They have all attained the age of majority, and they have entered the United States as exchange visitors in order to obtain further training in their professions. Each petitioner was served with a notice of hearing and an Order to Show Cause; each admitted the allegations in the Rule to Show Cause, but denied deportability. Each petitioner presented an application for permanent residence (Form I-485) under Section 245 of the Immigration and Nationality Act (8 U. S. C. 1255), which was entered into the record, and each has paid his respective fee of $25.00. The petitioners herein who require a license to practice their respective professions, have made application for such license before the Department of Registration and Education of the State of Illinois, and said licenses were approved.

Each of the petitioners has filed either a Third Preference or Sixth Preference, pursuant to Section 203(a)(3)(6) of the Immigration and Nationality Act (8 U. S. C. 1152 (a)(3)(6)), and that the Third Preference or Sixth Preference has been approved.

Each of the petitioners herein has filed in said cause a release from the Philippine Government, releasing their obligation to them and the obligation of the United States to return them to the Philippines for the two-year "return home" requirement.

The petitioners pointed out to the District Director that if they were compelled to leave the United States and re-

turn after two years, the round-trip cost to the Philippines and back is approximately $1,500.00, that this expenditure would create an unfair and undue hardship on the petitioners, and requested that they be permitted to remain in the United States, which request was denied.

In each of the cases, the Special Inquiry Officer rendered a decision, denying the petitioner's application for adjustment of status, found petitioner deportable, but found that the petitioner was a person of good moral character and granted each of the petitioners herein the privilege of voluntary departure.

An appeal from these decisions was taken on May 10, 1967 to the Board of Immigration Appeals, United States Department of Justice, Washington, D. C. On June 8, 1967, the Board of Appeals, in a consolidated opinion, denied these appeals. On June 15, 1967, the District Director of the Immigration and Naturalization Service informed the petitioners they were required to depart from the United States on July 7, 1967.

On July 7, 1967, the District Director denied the petitioners' request for an extension of time to depart the United States voluntarily.

An appeal was taken to the United States Court of Appeals for the Seventh Circuit in these cases and consolidated in the Court of Appeals. The Court of Appeals for the Seventh Circuit sustained the decision of the Board of Immigration Appeals.

REASONS FOR GRANTING THE WRIT.

It is respectfully urged that, for the following reasons, this Court grant the writ sought by this Petition:

1. The decision in these consolidated cases is of great national interest as it involves thousands of physicians, nurses and medical technologists who are presently in great need in the United States.

It is well known that there is an extreme shortage of physicians, nurses and medical technologists, as well as other scientific groups in the United States, and unless and until it is corrected, it endangers the health and welfare of our citizens.

Senator Walter F. Mondale, in a speech before Congress, on August 31, 1966, stated:

> "* * * Dr. Hunt (Dr. C. Halsey Hunt, Executive Director of the Educational Council for Foreign Medical Graduates), whose statistics I cited earlier, writes:
>
> > 'If the 11,000 foreign graduates who are now occupying internships in United States hospitals were suddenly withdrawn, many United States hospitals would be forced to curtail sharply their services to patients. I submit that for the long run this is a completely untenable situation.'
>
> "* * * The situation is not only untenable—it is a national disgrace. The growing shortage of medical and health personnel has been evident for many years. That the United States should, in the face of such clear evidence, depend increasingly on doctors from developing countries to make up for our insufficient number of medical graduates is inexcusable."

We attempted to correct this extreme shortage by soliciting and enticing physicians, nurses and medical technologists, as well as other scientific groups, from other countries with such vehemence, that it has caused us to be criticised all over the world because we were draining their brain power.

2. The decision in these cases is of great national interest because it may avoid criticism by countries participating under the exchange program that we are "brain draining" their nationals.

There is extensive legislative background that the question of "brain drain" is a very sensitive issue.

Senator Mondale stated in the same speech of August 31, 1966:

> "A brain drain program must be undertaken without doing violence to the spirit of the 1965 immigration legislation ending the discriminatory 'national origins' quota system, legislation which I was proud to co-sponsor.
>
> "A brain drain program must be humane, recognizing the importance of uniting families, and providing refuge to many cut off from their homelands for political reasons.
>
> "A brain drain program must recognize that not all of the drain from developing countries is to the United States. Our efforts in this area must be coordinated with our allies, for we do not want to reduce the drain to the United States only to increase it in equal measure to Canada and Western Europe.
>
> "A brain drain program must recognize that, in a number of important areas such as medicine, the United States has very serious manpower shortages. And if we would not turn our backs on the needs of others, neither can we ignore our own needs."

Dr. Donald F. Hornig, Director, Office of Science and Technology, Executive Office of the President, stated before the Immigration and Naturalization Subcommittee of the Senate Judiciary Committee on March 10, 1967:

"* * * The problem is that both the rich countries and the poor countries think they see the richest country in the world skimming the cream of their potential leadership, and of the groups essential to economic development. They see the situation as one in which the United States further enhances its position to the detriment of their own development and with the help of people whom they have trained. They see in it another example of 'the rich get richer' argument. In their eyes the very fact of our riches enables us to present opportunities which make it desirable for the most talented and highly mobile citizens of the entire world to migrate to the United States.

"They note that approximately 5% of the Ph.D. output of Europe each year migrates to the United States, and they suspect that it may be the best 5%. They see that almost one-half of the medical interns in New York City come from abroad. They feel that we are developing the medical care of our own population at the expense of countries who badly need improved health care themselves. When we defend the principle that each talented person should have the opportunity to make the maximum use of its talents, and that the freedom of the individual is the best guarantee of doing so, they note that we are defending a principle which is very much to our advantage in support of our own national programs.

"If we argue that this is not so, they point to such advertisements as the following taken from the November 17, 1966 issue of the *New Scientist*, an English publication. It reads in part:

"'On 5 December, for ten days, the top technical staff from over ten leading American companies will be in London to discuss new job opportunities in the USA for qualified British engineers and scientists.

" 'Employers will pay the full fare to the States for you, your family and belongings—probably offer you an advanced study course—give you staff support and facilities you never had before, and do their best to make you feel at home.

" 'The powerful American economy offers terrific prospects for technical people at all levels of experience. Major long term projects opening up are creating countless new opportunities. Back orders run into billions of dollars.

" 'The professional's role in research, development and manufacture is highly valued in the USA. Employers are more willing than ever to hire a man for his potential and give him lots of responsibility fast.' "

Richard A. Humphrey, Director, Commission on International Education of the American Council on Education, stated before the Subcommittee on Immigration and Naturalization of the Senate Judiciary Committee on March 10, 1967:

"* * * Third, I think it imprudent to accept a hypothesis in this matter as a conclusion. Too many of us, I believe, assume that this nation is somehow 'guilty' of exploiting the intellectual talent of others. This, it seems to me, is precisely the question we ought objectively to be examining. Until the evidence indicates that, in fact, we are chargeable with exploitation—and are not, simply and principly, the beneficiary of forces over which we have little or no control—I prefer (once again) to suspend judgment on so vague a concept as 'national guilt'. That other nations may sincerely believe us guilty of talent exploitation does not make it so.

"* * * We also know that persons of talent and skill tend to be internationally mobile. This is no new phenomena. We only need to remind ourselves of the wandering scholars of the Middle Ages. Consistently, so far as I am aware, such intellectual movement in more modern times has been in the direction of the

> more 'advanced' nations, and away from the 'less advanced' nations. It is a matter of simple consequence that those nations, including ourselves, which tend to attract talent and are the beneficiaries of international intellectual mobility, should suffer the heavy criticism of loser nations."

Congress was cognizant of this brain drain problem back in 1959 when Congressman Francis E. Walter, Chairman of the House Judiciary Committee, in a speech in Congress on February 5, 1959, stated:

> "The Department of State pointed out at that time that as many as sixteen foreign countries indicated their intention to withdraw from the program if the United States continued to keep the best of the trainees for its own use, thus depriving the respective countries of their services and voiding all private and public efforts invested in the building up of that priceless capital which human brain and know-how represents in the modern world."

3. Section 212(e) of the Immigration and Nationality Act (8 U. S. C. 1182(e)) involves an important question of Federal Law which has not been, but should be, because of its great importance, settled by this Court.

Congress, in order to prevent the criticism of brain draining and to induce the participants of the Exchange Visitors Program to continue with the Exchange Visitors Program, caused the passage of Section 212(e) of the Immigration and Nationality Act (8 U. S. C. 1182(e)).

Section 212(e) should be divided into two portions. The first portion,

> "No person admitted under section 1101(a)(15)(J) of this title or acquiring such status after admission shall be eligible to apply for an immigrant visa, or for permanent residence, or for a nonimmigrant visa under section 1101(a)(15)(J) of this title until it is estab-

> lished that such person has resided and been physically present in the country of his nationality or his last residence, or in another foreign country for an aggregate of at least two years following departure from the United States,"

pertains to the "return home rule", and is, in the opinion of counsel, intended by Congress to be for the benefit of the participating country and was intended to prevent brain drain.

The second portion—the "hardship provision"—was passed by Congress so the United States could reserve for itself the right to retain an exchange visitor in case of exceptional hardship to the spouse or child, who is a United States citizen, or in a case where the Attorney General finds the exchange visitor's presence in the United States in the public interest, and that was for the benefit of the United States.

It is the contention here that the first portion was passed for the benefit of the participating countries, and the second portion—"the hardship provision"—was passed for the benefit of the United States citizens. It is the first portion of this Section that pertains to these cases and requires interpretation based on legislative intent.

It seems that the Philippine Government feels that the first portion of Section 212(e), i.e., the "return home" section, was solely for the benefit of the participating countries and therefore for its benefit. In its desire to help the United States to alleviate at least to some degree, the great need for physicians, nurses and medical technologists, it is willing to release a certain number of exchange visitors from returning to their homeland if the United States desires to retain them. They have in many cases, upon application by an exchange visitor who is a physician, a nurse or a medical technologist, issued the following release:

"THE FOREIGN SERVICE OF THE PHILIPPINES
PHILIPPINE CONSULATE GENERAL
201 N. Wells, Suite 1914
Chicago 6, Illinois

Date: .....

Re: .....

"TO WHOM IT MAY CONCERN:

"This is to certify that the Exchange Visitors Program Committee, Manila, Philippines, waives the obligation of ..... to return to the Philippines and consents to her or his remaining in the United States permanently if the United States Government so desires.

GENEROSO P. PROVIDO
Consul General"

If Section 212(e) is so interpreted, and if Congress so intended it, and if the Court so construed it, thousands of doctors, nurses and medical technologists, as well as other scientific groups, who have been found qualified, could then apply for a change of status under section 245.1(b) 8 C. F. R., and get admitted to the United States as an immigrant without causing a brain drain and without creating antagonism amongst participating nations against the United States. Although this may not entirely solve the brain drain problem, it certainly would alleviate it to a great extent.

4. The decision in the Court of Appeals and the administrative body are in conflict with applicable decisions of the Supreme Court.

The Immigration authorities' position is that the language in Section 212(e) is explicit and an exchange visitor cannot adjust unless he returns to his homeland for two years, and completely disregard the legislative history in the case and the intent of Congress, and the Court of Appeals, for the Seventh Circuit, sustained that position in the cases of Carriaga and Tuazon, but stated in its opinion in the Carriaga case:

> "It may well be that it would be in the public interest to permit a physician to remain in this country and render services under these circumstances, but the statute contains no provision permitting that result."

The Court of Appeals, in denying relief in the above cases, based its decisions on the Carriaga and Tuazon cases, and stated:

> "The court there reasoned that the language of the requirement in Sec. 1182(e) was so clear that it 'was not susceptible of interpretation by resort to legislative history or otherwise.' "

In the Carriaga and Tuazon cases the Court of Appeals apparently ignored the historical and legislative background and the intent of Congress in passing Section 212(e) and relied solely on the assumption that the language of Section 212(e) "was so clear" that it was not susceptible of interpretation by resort to legislative history or otherwise, and in the Tuazon case the court seems to rely on the decision of *Gemsco, Inc.* v. *Walling,* 324 U. S. 244, which is not at all applicable in the above cases. Justice Rutledge, on page 260, stated:

> "The argument from legislative history undertakes in effect, to contradict the terms of Par. 8(f) by nega-

> tive inference drawn from inconclusive events occurring in the course of consideration of the various and widely differing bills which finally, by compromise and adjustment of two houses of Congress emerged from the conference as the Act. The plain words and meaning of a statute cannot be overcome by legislative history which through strained process of deduction from events of wholly ambiguous significance may furnish dubious basis for inference in every direction. This is such a case."

We do not quarrel with the decision in the Gemsco, Inc. case because the facts and circumstances and legislative history are different.

It is important to remember that "there is no more likely way to misapprehend the meaning of language—be it in a constitution, or statute, a will or a contract—than to read the words literally, forgetting the object to which the document as a whole is meant to secure." *In re Roosevelt Lanes, Inc.*, 234 F. Supp. 842 (D. C. N. Y. 1964); *Central Hanover Bank and Trust Co.* v. *Comm'r of Internal Revenue*, 159 F. 2d 167, 169. Cert. denied 331 U. S. 836.

There have been no decisions that counsel is aware of pertaining to this issue in any other Circuit, and this cause was not heard by the Supreme Court of the United States.

In the case of *U. S.* v. *American Trucking Assns.*, 310 U. S. 534, Justice Reed, in his opinion, stated:

> "There is, of course, no more persuasive evidence of the purpose of a statute than the words by which the legislature undertook to give expression to its wishes. Often these words are sufficient in and of themselves to determine the purpose of the legislative. In such cases we have followed their plain meaning. When meaning has led to absurd or futile results, however, this court has looked beyond the words to the purpose of the act. Frequently, however, even when plain meaning did not produce absurd results but merely an unreasonable one plainly at variance with policy of the

> legislation as a whole, this court has followed the purpose rather than the literal words. * * * The interpretation of the meaning of statutes applied to judicial controversies is exclusively a judicial function. 260 U. S. 178."

Certainly, the passing of Section 212(e) was not intended by Congress as a punitive statute and was not intended against exchange visitors. It was intended for the benefit of the participating countries. If the participating country desires to release the United States and the exchange visitor from their obligations under the statute, the United States should construe that as a gift from the Philippine government and accept it graciously.

We feel, therefore, that in these cases, as well as the Carriaga and Tuazon cases, the Court of Appeals did not take into consideration the legislative history and intent of Congress, and the decision is contrary to the law, as is so ably stated by Justice Reed in the American Trucking case.

CONCLUSION.

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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May ....., 1968.

APPENDIX.

OPINIONS BELOW.

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

April 9, 1968

Before

Hon. John S. Hastings, Chief Judge.
Hon. Roger J. Kiley, Circuit Judge.
Hon. Luther M. Swygert, Circuit Judge.

REMEDIOS B. ABINOJA, JULIANA B. BAUTISTA, CARINA DERLA DRILON, EDUARDO REYES ESTACIO, ARCELI A. KALALO, EDNA T. PAREDES, SALUD U. RODRIQUEZ, AND LUZ B. YAP,
Petitioners,
Nos. 16326-16333
vs.
IMMIGRATION AND NATURALIZATION SERVICE,
Respondent.

MILAGROS T. AQUINO, MINERVA DIRIC BACTAT, SEVERINO M. DEASIS, AND TERESITA VENDIOLA REVINA,
Petitioners,
Nos. 16476-16479
vs.
IMMIGRATION AND NATURALIZATION SERVICE,
Respondent.

Petitions for Review of Orders of the Immigration and Naturalization Service.

ORDER.

These several petitioners appeal from orders of the Immigration and Naturalization Service denying them adjustment of status under 8 U. S. C. 1255. They are represented by the same attorney and the several appeals present a common question: whether citizens of the Philippines, admitted as non-immigrants[1] for further training in medical professions, are entitled, because the Philippine government has released them from any obligation to return to that country, to a change of status to permanent residents without returning to the Philippines "for an aggregate of at least two years" as required by 8 U. S. C. 1182(e).

Petitioners agree that the basic issue has been decided against them by this court in *Carriaga* v. *Immigration and Naturalization Service,* 368 F. 2d 337 (7th Cir. 1966), but they ask us to "take another look" at the issue, in the light of the legislative history of the Exchange Act.

We are not persuaded that we should not follow *Carriaga.* In *Tuazon* v. *Immigration and Naturalization Service,* No. 16174 (7th Cir., January 30, 1968), this court applied *Carriaga* to reject the precise contention made here based on the Philippine government release and upon legislative history. The court there reasoned that the language of the requirement in Sec. 1182(e) was so clear that it "was not susceptible of interpretation by resort to legislative history or otherwise."

We hold, on authority of *Carriaga* and *Tuazon,* that the Special Inquiry Officer and Board of Appeals did not err in denying petitioners' applications for adjustment of status on the ground that they had not complied with 8 U. S. C. 1182(e).

The petitions are denied.

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1. Under the Immigration and Naturalization Act and Mutual Educational and Cultural Exchange Act, respectively, 8 U. S. C. 1101(a)15J and 22 U. S. C. 2451.

*UNITED STATES DEPARTMENT OF JUSTICE.
Board of Immigration Appeals.

June 8, 1967.

Files: A-14012043—Chicago
A-13801900
A-14098388
A-14029201
A-14050474
A-13997725
A-13998474
A-14044567

In re: Salud U. Rodriguez
Eduardo Reyes Estacio
Remedios B. Abinoja
Luz B. Yap
Juliana B. Bautista
Carina Derla Drilon
Arceli A. Kalalo
Edna T. Paredes

In Deportation Proceedings.

Appeal.

Oral Argument: May 10, 1967.

On behalf of respondents:
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On behalf of I&N Service:
Irving A. Appleman, Esq.,
Appellate Trial Attorney.

Charges:

Order: Section 241(a)(2), I&N Act (8 USC 1251)—Nonimmigrant (exchange visitor)—remained longer (all).

Lodged: None.

Application: Adjustment of status to permanent resident—Section 245, Immigration and Nationality Act (8 USC 1255); hold proceedings in abeyance; or extend period for voluntary departure (all).

These cases are before us on appeal from the decisions of special inquiry officers at Chicago denying the respondents' applications for adjustment of their status to permanent residents; granting them the privilege of voluntary departure; and providing for their deportation from the United States to the Republic of the Philippines, on the charges stated in their respective Orders to Show Cause, in the event of their failure to so depart. The appeals will be dismissed.

These records relate to adult aliens who are natives and nationals of the Republic of the Philippines. They were all admitted to the United States as exchange visitors—doctors, nurses and medical technicians. The periods for which they were admitted have now long since expired.

Dr. Salud U. Rodriguez was granted an extension of stay which expired on July 22, 1964. On December 28, 1964, with the approval of the Department of State, she was advised by the Immigration and Naturalization Service that a further extension of her stay as an exchange visitor was denied. She was then granted the privilege of departing from the United States voluntarily within 30 days. The time of her voluntary departure was subsequently extended to December 8, 1965. On January 26, 1967, the Department of Health, Education, and Welfare informed the District Director at Chicago that its Exchange Visitor Waiver Review Board was considering requesting the Department of State, which has already recommended denial of an extension of stay for Dr. Rodriguez, for a waiver of the two-year foreign residence requirement for Dr. Rodriguez. Contained in that

notification was a request for postponement of Dr. Rodriguez's scheduled voluntary departure date.

Upon the expiration of the period for which Mr. Eduardo Reyes Estacio was admitted, he was granted until September 25, 1966, to depart from the United States voluntarily. The period for his voluntary departure was subsequently extended until October 15, 1966. Meanwhile, the Service, with the recommendation of the Department of State, had denied his request for an extension of stay. On January 4, 1967, the Department of Health, Education, and Welfare did inform the District Director at Chicago that its Exchange Visitor Waiver Review Board was considering requesting the Department of State to again consider a waiver of the two-year foreign residence requirement for Mr. Estacio; and it did then request that the District Director postpone the alien's scheduled voluntary departure date. However, on March 7, 1967, the Department of Health, Education, and Welfare informed the District Director that it had decided not to request a waiver in his case.

Remedios B. Abinoja requested the Department of State to grant her an extension of stay as an exchange visitor to complete her educational objectives. This request was referred to the District Director at Chicago, who denied the request and granted the respondent until September 29, 1966, to depart from the United States voluntarily. The time for Miss Abinoja's voluntary departure was subsequently extended to January 10, 1967.

Miss Luz B. Yap's original period of admission expired on May 6, 1966. On July 8, 1966, she was advised in writing by the Service that she was required to depart from the United States voluntarily on or before July 18, 1966.

Miss Juliana B. Bautista was originally admitted for a period until June 9, 1966. On September 8, 1966, she was advised in writing that she was required to depart from

the United States on or before September 22, 1966. This period for her voluntary departure was subsequently extended until November 1, 1966.

Miss Carina Derla Drilon was admitted for a period until November 30, 1966. On February 9, 1967, she was notified to appear for a hearing in deportation proceedings on February 28, 1967.

Miss Arceli A. Kalalo was authorized to remain in the United States until January 12, 1967. She was accorded hearings in deportation proceedings on February 10, 1967, and on March 17, 1967.

Miss Edna T. Paredes was admitted to the United States for a period until October 20, 1966. On November 15, 1966, she was notified to appear for a hearing before a special inquiry officer in deportation proceedings on November 28, 1966. Her hearing was held on March 3, 1967.

On the basis of the foregoing, it is clear that each of the respondents has remained in the United States for a longer period of time than authorized. Accordingly, we concur in the special inquiry officers' conclusions that they are deportable, as charged.

It is no defense to their deportability, or of assistance to them in adjusting their status to that of permanent residents, that the government of the Republic of the Philippines has waived the obligation of the respondents to return to that country. The reasons have been adequately set forth by this Board (*Matter of Padilla,* Int. Dec. 1614) and by the courts (see *Carriaga* v. *I&N Service,* 368 F. 2d 337). No useful purpose would be served by repeating the reasons here.

It is likewise of no assistance to the respondents herein that there is presently pending in Congress legislation (H. R. 566) which, if enacted, would amend Section 212(e) of the Immigration and Nationality Act (8 USC 1182) to

permit the Attorney General to waive the two-year foreign residence requirement for exchange aliens, if the country of their nationality gives the Attorney General a statement setting forth that it has no objection to such a waiver. In the first place, the proper function of this administrative tribunal is to interpret the law as it stands on the statute books, in the light of the applicable facts. Secondly, it is noted that legislation similar to that referred to by counsel, supra, was proposed in the 89th Congress (H. R. 236 and S. 929), and that Congress did not see fit to enact it when it amended the Immigration and Nationality Act in 1965. Third, the possibility of passage of pending legislation provides no sound basis for overruling the special inquiry officer, and it is too indefinite a possibility to justify holding these proceedings in abeyance.

As indicated above, the Department of Health, Education, and Welfare is considering requesting the Department of State to grant one of the respondent's (Rodriguez) a waiver of the applicable two-year foreign residence requirement, despite the fact that the Department of State has already indicated that an extension would not be recommended in the case of that alien. Also, the Department of Health, Education, and Welfare did indicate that it would consider a similar request in the case of a second alien (Estacio), but later decided not to request a waiver. As to the other six respondents, counsel relies on a general request made to the Department of Health, Education, and Welfare to request such a waiver, but the record contains a reply to counsel from that Department dated January 9, 1967, indicating that said Department is unable to change the criteria of the Department of State to interpret them so as to permit one country of origin participating in the Exchange Program to waive the return of its nationals. Accordingly, and in view of the foregoing, we find that the decisions of the special inquiry officers in the cases of these

respondents must be affirmed. The only additional comment required on this aspect of the cases is that the respondents have already been granted the privilege of voluntary departure by the special inquiry officers, and the records before us support the action of said officials in this respect.

In conclusion, we note that in the two cases, supra, wherein the Department of Health, Education, and Welfare did consider requesting waivers, that Department merely requested the District Director for postponement of the departure date of the aliens involved. Basically, that is the request for all the respondents involved here. This, of course, is a matter properly for the consideration of the appropriate District Director of the Immigration and Naturalization Service, not for this Board. Needless to say, the District Director will give appropriate consideration to the factors bearing on this relief, as hereinbefore discussed.

ORDER: It is ordered that the appeals be and the same are hereby dismissed.

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Chairman.

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* Although the Board of Immigration Appeals issued separate opinions in the following cases: Milagros T. Aquino, File A14-046-993; Minerva Diric Bactat, File A14-046-498; Severino M. DeAsis, File A13-758-483 and Teresita Vendiola Revina, File A14-045-164, the issues of law are identical, the conclusion of the Board of Immigration Appeals and the basic facts were the same, with the exception of the name, occupation and the type of exchange program. All of the cases were consolidated for argument in the Court of Appeals and a single decision was rendered.

* UNITED STATES DEPARTMENT OF JUSTICE.

Immigration and Naturalization Service.

File: A14 045 164—Chicago July 13, 1967

In the Matter of
TERESITA VENDIOLA REVINA,
Respondent.
} In Deportation Proceedings.

Charge:
I & N Act—Section 241(a)(2) (8 USC 1251(a)(2))—Nonimmigrant—Remained longer.

Application:
To defer the proceedings or adjustment of status under Section 245 of the Immigration and Nationality Act, or voluntary departure.

In Behalf of Respondent:
Lawrence A. Jacobson, Attorney
38 South Dearborn Street
Chicago, Illinois

In Behalf of Service:
Irving Schwartz
Trial Attorney
Chicago, Illinois

DECISION OF THE SPECIAL INQUIRY OFFICER.

The respondent is a 24 year old single female. She admitted that she is an alien, a native and citizen of the Philippines, who entered the United States at Honolulu, Hawaii, on November 14, 1964, at which time she was admitted as an exchange visitor. She also admitted the allegation that she has remained in the United States be-

yond April 7, 1967. She did not admit that allegation No. 5 in the Order to Show Cause is true, stating that although she was authorized to remain in the United States until April 7, 1967, because of the facts in her case she is entitled to stay beyond this date. The respondent also denied deportability on the charge contained in the Order to Show Cause.

Pursuant to stipulation by counsel the following documents were received in evidence: Exhibit 2, Form I-94, Arrival-Departure Record, which shows that the respondent was admitted into the United States at Honolulu, Hawaii, on November 14, 1964, as Class J-1 (exchange visitor) until November 9, 1965; Exhibit 3, Form I-210, dated March 10, 1967, notifying the respondent that she must depart from the United States on or before April 7, 1967; Exhibit 4, DSP-66, Certificate of Eligibility for Exchange Visitor Status, dated November 2, 1964, which is endorsed to show that the respondent was admitted into the United States at Honolulu, Hawaii, on November 14, 1964, as Class J-1 until November 9, 1965; and Exhibit 5, DSP-66, Certificate of Eligibility for Exchange Visitor Status, dated November 2, 1965, endorsed to show that the respondent's stay was extended to October 20, 1966.

Counsel then presented several documents to the admission of which the trial attorney stated that he had no objection and these documents were incorporated in the record as follows: Exhibit 6 is a certificate from the Consul General of the Philippines at Chicago, Illinois, certifying that the Exchange Visitors Program Committee at Manila in the Philippines waives the obligation of the respondent to return to the Philippines; Exhibit 7 is a Form I-171, Notice of Approval of Visa Petition, which shows that the respondent's visa petition was approved by the district director at Chicago, Illinois on April 21, 1967, under the provisions of Section 203(a)(3) of the Immigration and

Nationality Act; Exhibit 8 is a copy of a letter from the Department of Health, Education and Welfare, dated January 9, 1967, addressed to counsel and signed by Shelton B. Granger, Chairman, Foreign Exchange Visitor Waiver Review Board, which advised counsel that the Department of Health, Education and Welfare is unable to change the criteria of the Department of State in order to interpret them so as to permit one country of origin participating in the exchange program to waive the return of its nationals; and Exhibit 9 is a copy of H. R. 566 which is a bill pending in Congress which provides that the Attorney General may grant a waiver of the two year foreign residence requirement of Section 212(e) of the Immigration and Nationality Act if the foreign country of an alien's nationality advises in writing that it has no objection to such waiver.

Counsel also stated that a request had been made to the Department of Health, Education and Welfare, that they intervene on behalf of the Walther Memorial Hospital and apply for a waiver under the exchange program in the case of the respondent. Counsel stated that the request was sent to the Health, Education and Welfare during the week preceding the hearing and that no reply has been received from them. Counsel declared that in practically all former cases submitted by him the Department of Health, Education and Welfare has requested the Immigration and Naturalization Service to stay departure time so that they might review the record. The trial attorney advised that the administrative file in this case does not contain such a request.

Counsel's motion that the proceedings be held in abeyance pending action on the bill H. R. 566, on the ground that, if enacted, it might benefit the respondent, was denied as the bill in question has no bearing on the issue of deportability. The evidence in this case establishes that the

respondent's authorized stay as an exchange visitor expired on October 20, 1966, and that she was granted until April 7, 1967, to depart from the United States. The respondent has not been granted any further extension of her temporary stay or of the time for her departure. Based upon all the foregoing, it is concluded that the respondent's deportability on the charge contained in the Order to Show Cause has been established by clear, unequivocal and convincing evidence.

The respondent filed an application for adjustment of status to that of a permanent resident under Section 245 of the Immigration and Nationality Act notwithstanding the fact that counsel was advised that the respondent was not eligible for such relief in the absence of evidence that she has complied with the foreign residence requirement of Section 212(e) of the Immigration and Nationality Act, or has been granted a waiver thereof (see 8 CFR 245.1(b) and *Matter of S.*, 5 I&N Dec. 229). Counsel presented a statement from the Philippine Consul General at Chicago, stating that the Philippine government waives the obligation of the respondent to return to that country. However, in the *Matter of Padilla,* Int. Dec. No. 1614, the Board of Immigration Appeals ruled that such waiver by the Philippine government did not constitute compliance with Section 212(e) of the Immigration and Nationality Act. Accordingly, there being no evidence that the respondent has complied with the foreign residence requirement of Section 212(e) of the Act or has been granted a waiver thereof, the respondent's application for adjustment of status under Section 245 of the Immigration and Nationality Act will be denied.

The respondent applied in the alternative for the privilege of voluntary departure in lieu of deportation. The record shows that the respondent has established statutory eligibility for that privilege. Upon consideration of all

the facts and circumstances in this case, the respondent will be granted an opportunity to avoid deportation by departing voluntarily from the United States. The respondent named the Philippines as the country to which her deportation should be directed if it is required by law.

ORDER: IT IS ORDERED that the respondent's application for adjustment of status under Section 245 of the Immigration and Nationality Act be denied.

IT IS FURTHER ORDERED that in lieu of an order of deportation the respondent be granted voluntary departure without expense to the Government within such time and under such conditions as the district director shall direct.

IT IS FURTHER ORDERED that if the respondent fails to depart when and as required, the privilege of voluntary departure shall be withdrawn without further notice or proceedings and the following order shall thereupon become immediately effective: the respondent shall be deported from the United States to the Philippines on the charge contained in the Order to Show Cause.

/s/ E. A. BERMAN,
E. A. Berman,
Special Inquiry Officer.

• Although the Special Inquiry Officer issued separate decisions in each of the following cases: Remedios B. Abinoja, File A14-098-388; Juliana B. Bautista, File A14-050-474; Carina Derla Drilon, File A13-997-725; Eduardo Reyes Estacio, File A13-801-900; Arceli A. Kalalo, File A13-998-474; Edna T. Paredes, File A14-044-567; Salud U. Rodriquez, File A14-012-043; Luz B. Yap, File A14-029-201; Milagros T. Aquino, File A14-046-993; Minerva Diric Bactat, File A14-046-498; Severino M. DeAsis, File A13-758-483 and Teresita Vendiola Revina, File A14-045-164, the issues of law are identical, the conclusion of the Special Inquiry Officer and the basic facts were the same, with the exception of the name, occupation and the type of exchange program. All of the cases were consolidated for argument in the Court of Appeals and a single decision rendered.

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No. 121

In the Supreme Court of the United States

OCTOBER TERM, 1968

REMEDIOS B. ABINOJA, ET AL., PETITIONERS

v.

IMMIGRATION AND NATURALIZATION SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,

FRED M. VINSON, JR.,
Assistant Attorney General,

BEATRICE ROSENBERG,
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Attorneys,
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IMMIGRATION AND NATURALIZATION SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

Petitioners are natives and citizens of the Philippines who entered the United States as exchange visitors pursuant to the Mutual Educational and Cultural Exchange Act of 1961, 75 Stat. 527, 535, for further study and training in their respective medical professions. Each overstayed the authorized period of his admission and was found deportable (but granted the privilege of voluntary departure) after a hearing before a Special Inquiry Officer.

The instant controversy arises out of the fact that, during the deportation proceedings, each petitioner applied for adjustment of his (or her) status to that of a permanent resident under Section 245 of the Immigration and Nationality Act, 8 U.S.C. 1255. In each case, the Special Inquiry Officer held that petitioners were not eligible for such relief, because they had not complied with Section 212(e) of the Act, 8 U.S.C. 1182(e), providing that "[n]o person" admitted under the exchange-visitor program "shall be eligible to apply for * * * permanent residence * * * until it is established that such person has resided and been physically present in the country of his nationality or last residence, * * * for an aggregate of at least two years following departure from the United States". The Officer held that the ineligibility applied even though petitioners filed official documents from the Philippine government releasing them from their exchange-visitor commitment. On June 8, 1967, the Board of Immigration Appeals sustained the decision of the Special Inquiry Officer (Pet. 17-22). On petition for review, the court of appeals affirmed (Pet. 15-16).

Petitioners contend that the sole purpose of the two-year foreign residence requirement of 8 U.S.C. 1182 (e) was to benefit the exchange visitor's home country and that therefore the requirement should not apply when that country has consented to release the exchange visitor from his return-home commitment. The identical issue was presented to this Court in a petition for certiorari (No. 970, O.T., 1966) to review the decision in *Carriaga* v. *I.N.S.*, 368 F. 2d 337 (C.A. 7), where the court of appeals held, as

here, that the explicit language of the statute on its face did not permit the construction urged by petitioners. See, also, *Tuazon* v. *I.N.S.*, 389 F. 2d 363 (C.A. 7), and *Velasco* v. *I.N.S.*, 386 F. 2d 283 (C.A. 7), certiorari pending, No. 77 Misc., this Term. Certiorari was denied in *Carriaga*, 386 U.S. 942, and the instant case warrants no different treatment.

Even if, as petitioners urge, the legislative history of the statute may and should be considered, that history confirms the consistent reading of this statute by the lower courts. The exchange-visitor program was established by Congress in 1948 with the passage of the United States Information and Educational Exchange Act, 62 Stat. 6, in order to "promote a better understanding of the United States in other countries" by means of, *inter alia*, "the interchange of persons, knowledge, and skills". The program did not, however, function as contemplated. Many exchange visitors evaded their obligation to use abroad the knowledge and skills acquired here, by leaving the United States and securing readmittance as immigrants from neighboring countries such as Canada. See H. Rep. No. 2110 and S. Rep. No. 1608, 84th Cong., 2d Sess. The President and the Congress concluded that these efforts tended to undermine the basic objectives of the program.[1] As a result, amendments

[1] Both the House and Senate Reports cited above refer to the language of President Eisenhower in vetoing a private bill to grant an exchange visitor permanent residence:

> All of the exchange programs are founded upon good faith * * *. On the one hand exchange aliens must return to the country from which they come. On the other hand,

were adopted in 1956 to make clear that the "exchange program is not an immigration program and should not be used to circumvent the operation of the immigration laws." S. Rep. No. 1608, 84th Cong., 2d Sess., p. 3. The principal amendment adopted was the provision, at issue here, establishing the two-year foreign residence requirement for exchange visitors.[2] The Senate Report stated that the purpose of the restriction was to promote a policy whereby "those individuals who are brought to the United States will return either to their own *or another cooperating country* to impart to their friends and the society in which they live impressions of the United States and its culture." S. Rep. No. 1608, 84th Cong., 2d Sess., p. 2 (emphasis supplied); see, also, remarks of Rep. Walter, 105 Cong. Rec. 1952-1953; 1 Gordon & Rosenfield, *Immigration Law and Procedure* (1967) § 6.8g.

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the United States must not permit either immediate reentry or other evasion of the return rule. Otherwise the countries from which our exchange visitors come will realize little or no benefit from the training or experience received in the United States, and we shall fail to promote good will toward and better understanding of our way of life.

[2] A provision for waiver of that requirement by the Attorney General in the public interest, upon the request of an interested government agency and the recommendation of the Secretary of State, was also enacted. Its purpose was to permit the United States to retain certain exceptionally talented exchange visitors needed in programs of vital governmental importance. Needless to say, the waiver provision was meant to be exercised very sparingly. See Memorandum for the Respondent (I.N.S.) in Nos. 77 Misc. and 78 Misc., this Term, presently pending on petitions for writs of certiorari.

It is clear, therefore, that while one purpose of the exchange-visitor program was to aid underdeveloped countries, an equally important objective was to benefit the United States by having exchange visitors return to their own or some other underdeveloped nation where they might share impressions of this country and thus foster mutual understanding and good will. The willingness of an exchange visitor's home country to release him from his return-home commitment plainly does not satisfy the latter purpose and thus was not intended by Congress to permit avoidance of the explicit two-year foreign residence requirement. Furthermore, even a release by the alien's own government can scarcely be said to satisfy the express congressional concern that this program not be used as a supplement or alternative to the immigration laws. As petitioners stress at some length (Pet. 5-9), Congress has been aware of the shortage of medical personnel in this country and of the possibility of tapping the supply of professionals from other countries. In this light, the judgment of Congress that such badly needed personnel should not be drawn from the ranks of aliens admitted under the exchange visitor program, at least until they have lived abroad for two years, represents the type of policy determination which should be respected as peculiarly a legislative matter.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

FRED M. VINSON, JR.,
Assistant Attorney General.

BEATRICE ROSENBERG,
ROGER A. PAULEY,
Attorneys.

JUNE 1968.

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